

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ERNESTO SANTIAGO,  
Plaintiff

v. CIVIL ACTION NO. 04-335 ERIE

UNITED STATES OF AMERICA,  
Defendant

MAGISTRATE JUDGE'S REPORT & RECOMMENDATION

Proceedings held before the HONORABLE

SUSAN PARADISE BAXTER, U.S. Magistrate Judge,

in Judge's Chambers, U.S. Courthouse, Erie,

Pennsylvania, on Wednesday, November 16, 2005.

APPEARANCES:

ERNESTO SANTIAGO, Plaintiff herein, (via Phone),  
appearing Pro Se.

PAUL SKIRTICH, Assistant United States Attorney,

Ronald J. Bench, RMR - Official Court Reporter

2

1 PROCEEDINGS

2

3 (Whereupon, the following excerpt of proceedings was  
4 held on Wednesday, November 16, 2005.)

5

6 THE COURT: All right. I'm ready to rule on the  
7 motion to order immediate Transfer of plaintiff as he continues  
8 grave retaliation. This is my report and recommendation. My  
9 recommendation is that the motion to order immediate transfer  
10 in the form of a motion for preliminary injunction be denied.

11 My reasoning is as follows. There are four factors  
12 that must be shown for the issuance of a temporary restraining  
13 order, which are the same as those required to issue a

14 preliminary injunction. I cite the case Fink\_v.\_Supreme\_Court

---

15 of Pennsylvania, 646 F.Supp. 569, 570 (M.D.Pa. 1986). To

---

16 obtain a preliminary injunction, the District Court must

17 consider: (1) the likelihood of success on the merits; (2) the

18 extent of irreparable injury from the alleged misconduct;

19 (3) the extent of harm to the movant; and (4) the effect on

20 public interest. I cite the case of Clean\_Ocean\_Action\_v.

---

21 York, 57 F.3d 328, 331 (3rd Cir. 1995).

---

22 If the record does not support a finding of both

23 irreparable injury and a likelihood of success on the merits,

24 then a preliminary injunction cannot be granted. I cite the

25 case Marxe\_v.\_Jackson, 833 F.2d 1121 (3rd Cir. 1987).

---

1 This case does not support a finding of the

2 likelihood of success on the merits for at least two reasons.

3 First, the claims that underlie this case are a

4 Federal Tort Claim Act case on a medical issue against the

5 United States only. The claims in the motion for transfer are

6 against other defendants and involve other claims that are not  
7 part of the underlying case.

8 Secondly, the request for the court to issue an  
9 immediate transfer to another institution goes beyond the  
10 authority of the court to intervene in BOP affairs.

11 Therefore, I recommend that the motion for  
12 preliminary injunction be denied.

13 I have given the plaintiff notice that he can in  
14 fact file a lawsuit on the claims inside the motion for  
15 injunctive relief, if he so desires.

16 He also has 10 days from today's date within which  
17 to appeal this, within which to object to this recommendation.  
18 And that objection would go to the district judge for final  
19 decision, Mr. Santiago.

20 That ends my report and recommendation on docket  
21 entry number 36.

22

23 - - -

24

25

## C E R T I F I C A T E

-----

2

3

4 I, Ronald J. Bench, certify that the foregoing is a

5 correct transcript from the record of proceedings in the

6 above-entitled matter.

7

8

9

10 \_\_\_\_\_

11 Ronald J. Bench

12

13

14

15

16

17

18

19

20

21

22

23

24

25